



0000116926

ORIGINAL

RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

2004 JAN -6 P 2:34

COMMISSIONERS

MARC SPITZER, Chairman
 JIM IRVIN
 WILLIAM A. MUNDELL
 JEFF HATCH-MILLER
 MIKE GLEASON
 KRISTIN K. MAYES

AZ CORP COMMISSION
 DOCUMENT CONTROL

In the matter of:

INTERSECURITIES, INC.
 570 Carillon Parkway
 St. Petersburg FL 33716-1202

GREGORY RUSSELL BROWN AND KAREN
 BROWN, husband and wife
 16417 South 15th Drive
 Phoenix AZ 85045
 CRD #2233684

Respondents.

DOCKET NO. S-03482A-03-0000

**SECURITIES DIVISION'S
 RESPONSE TO RESPONDENT
 INTERSECURITIES, INC.'S
 FIRST REQUEST FOR
 PRODUCTION OF DOCUMENTS**

Arizona Corporation Commission

DOCKETED

JAN - 6 2004

DOCKETED BY

**PLAINTIFF SECURITIES DIVISION'S RESPONSE AND OBJECTIONS
 TO MUTUAL BENEFITS CORPORATION'S
 FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

The Securities Division ("Division") of the Arizona Corporation Commission hereby responds to Intersecurities, Inc.'s ("ISI") First Request for Production of Documents (the "Request") and produces or otherwise objects to the Request as follows:

Request 1: "The Securities Division's complete investigative file relating to and/or resulting in the commencement of Arizona Corporation Commission Docket No. S-03482A-03-0000. This should include, but not be limited to, the following:

Division Response: The Division objects to this request as over broad and on the grounds that it seeks information that is not relevant to the subject matter in the pending action and which is protected by the investigative, work-product and attorney-client privileges more particularly discussed in the objection discussion section below.

- 1 a. All tapes and/or transcripts of tapes and/or memoranda and/or notes
2 and/or transcripts of sworn testimony that in any way memorialize
3 communications between the Securities Division and (i) ISI or Gregory
4 Brown ("Brown") and/or (ii) employees/independent agents/representatives
5 of ISI, including Examinations Under Oath, and all exhibits thereto;

6 Division Response: The Division objects to this request on the grounds of investigative, work-
7 product and attorney-client privileges more particularly discussed in the objection discussion
8 section below. Notwithstanding the foregoing objections, the Division has provided all transcripts
9 of sworn testimony relating to this matter, including Examinations Under Oath, and all exhibits
10 thereto.

- 11 b. All tapes and/or transcripts of tapes and/or memoranda and/or notes
12 and/or transcripts of sworn testimony that in any way memorialize
13 communications between the Securities Division and any entity or
14 individual interviewed and/or contacted in connection with the Securities
15 Division's investigation of ISI or Brown and relating to the allegations set
16 forth in the Notice. This also includes all complaints, correspondence and
17 Examinations Under Oath, and all exhibits thereto;

18 Division Response: The Division objects to this request on the grounds of investigative, work-
19 product and attorney-client privileges more particularly discussed in the objection discussion
20 section below. Notwithstanding the foregoing objections, the Division has and will provide the
21 requested information for all investors and other individuals it expects to call as witnesses in this
22 matter.

- 23 c. All documents in the possession or under the control of the Securities
24 Division relating to ISI or Brown;

25 Division Response: The Division objects to this request as overbroad and on the grounds it seeks
26 information that is not relevant to the subject matter in the pending action and which is protected
27 by the investigative, work-product and attorney-client privileges more particularly discussed in the
28 objection discussion section below. Notwithstanding the foregoing objections, the Division has
29 provided the requested information relating to this matter except for those documents to which the
30 Division objects for the reasons set forth in the objection discussion section below.

- 31 d. All affidavits and statements provided by individuals interviewed or
32 contacted by the Securities Division relating to the allegations set forth in
33 the Notice and/or relating to ISI or Brown;

1 Division Response: The Division objects to this request as overbroad and on the grounds it seeks
2 information that is not relevant to the subject matter in the pending action and which is protected
3 by the investigative, work-product and attorney-client privileges more particularly discussed in the
4 objection discussion section below. Notwithstanding the foregoing objections, the Division has
5 provided the requested information relating to this matter.

6 **e. All correspondence regarding or referring to ISI or Brown;**

7 Division Response: The Division objects to this request as overbroad and on the grounds it seeks
8 information that is not relevant to the subject matter in the pending action and which is protected
9 by the investigative, work-product and attorney-client privileges more particularly discussed in the
10 objection discussion section below. Notwithstanding the foregoing objections, the Division has
11 and will provide such documentation except for those documents to which the Division objects for
12 the reasons set forth in the objection discussion section below.

13 **f. All documents evidencing telephone calls made by the Securities Division or**
14 **anyone acting on its behalf to any of the alleged "investors" as set forth in**
15 **the Notice, including, but not limited to, (i) documents sufficient to identify**
16 **each telephone call made by the Securities Division, (ii) who authorized**
17 **each telephone call, (iii) who placed the telephone calls, (iv) the scripts or**
18 **outlines used by the individuals who placed or received these calls; and (v)**
19 **any notes, transcripts, tapes or other memoranda memorializing the**
20 **telephone calls;**

21 Division Response: The Division objects to this request on the grounds of the investigative,
22 work-product and attorney-client privileges more particularly discussed in the objection discussion
23 section below.

24 **g. All documents sufficient to identify the "49" Arizona investors referred in**
25 **Paragraph 8 of the Notice. Said documents should include the name,**
26 **address, telephone number and/or email address for these individuals, and**
27 **the date and amount of each investment;**

28 Division Response: Respondent is asking for information it already has in its possession.
29 Respondent furnished the Division with investor lists. However, the Division has or will provide
30 such documentation to the extent that it is in the Division's possession except for those documents
31 to which the Division objects for the reasons set forth in the objection discussion section below.

1 **h. All subpoenas issued by the Securities Division in this matter and all**
2 **documents provided in response to said subpoenas.**

3 Division Response: The Division has or will provide the requested documents, if any.

4 **Request 2: Copies of all other documents obtained during the Securities Division's**
5 **investigation that are not specifically referred to in Request No. 1(a-h) above.**

6 Division Response: The Division repeats its prior objections on the grounds the request is
7 overbroad and seeks information that is not relevant to the subject matter in the pending action and
8 which is protected by the investigative, work-product and attorney-client privileges more
9 particularly discussed in the objection discussion section below.

10 **Request 3: Copies of all documents in the possession or under the control of the Securities**
11 **Division relating to the investments or accounts of the "investors" referred to**
12 **in the Notice.**

13 Division Response: The Division has furnished the requested documents.

14 **Request 4: Copies of all documents provided by the Securities Division to other state**
15 **securities agencies and/or law enforcement organizations regarding Brown or**
16 **ISI, its registered representatives, independent contractors, employees and/or**
17 **other agents.**

18 Division Response: The Division objects to this request on the grounds that the information
19 sought by Respondent is not relevant to the subject matter in the pending action and which is
20 protected by the investigative and work-product privileges more particularly discussed in the
21 objection discussion section below.

22 **Request 5: Copies of all documents provided to the Securities Division by other state**
23 **securities agencies and/or law enforcement organizations regarding Brown or**
24 **ISI, its registered representatives, independent contractors, employees and/or**
25 **other agents.**

26 Division Response: The Division objects to this request on the grounds that the information
sought by Respondent is not relevant to the subject matter in the pending action and which is
protected by the investigative privilege more particularly discussed in the objection discussion
section below. Notwithstanding the foregoing objections, the Division has or will provide the
requested documents to the extent that they may be used as exhibits in any hearing of this matter.

1 **Request 6: Copies of any documents that concern or reflect any contacts or**
2 **communications with other state securities agencies and/or law enforcement**
3 **organizations regarding Brown or ISI, its registered representatives,**
4 **independent contractors, employees and/or other agents.**

5 Division Response: The Division objects to this request on the grounds that the information
6 sought by Respondent is not relevant to the subject matter in the pending action and which is
7 protected by the investigative, work-product and attorney-client privileges more particularly
8 discussed in the objection discussion section below. Notwithstanding the foregoing objections, the
9 Division has or will provide the requested documents to the extent that they may be used as
10 exhibits in any hearing of this matter.

11 **Request 7: Documents sufficient to identify the dates upon which the Securities Division**
12 **learned of the proceedings referred to in Paragraphs 15, 17, 18, 23-26, 29, 32**
13 **and 34 of the Notice.**

14 Division Response: The Division has or will provide the requested documents to the extent that
15 they are in the Division's possession.

16 **Request 8: Documents related to any Securities Division policies, procedures, manuals**
17 **and/or guidelines for handling calls from the public that are referred to a**
18 **Securities Division attorney or investigator.**

19 Division Response: The Division objects to this request on the grounds it seeks information that
20 is protected by the attorney-client privilege. Notwithstanding the foregoing objection, the Division
21 has or will provide the requested information relating to this matter except for those documents to
22 which the Division objects for the reasons set forth in the objection discussion section below.

23 **Request 9: Schedule of Securities Division attorneys and investigators "of the day" and/or**
24 **Division attorneys or investigators who were designated to receive inquiries**
25 **from the public from January 1, 1999 through June 30, 1999.**

26 Division Response: The Division has provided the requested document.

Request 10: Copies of all notes made by Wendy Coy of any conversations she had with
Brown on or about April 1999 or at any time.

Division Response: There are no documents responsive to this request.

Request 11: Documents sufficient to identify the name and outcome of any case Wendy Coy
worked on from October 15, 1990 through December 31, 2000 that involved
allegations related to the offer and/or sale of telephones.

1 Division Response: Any such documents are public records, which are available for inspection
2 and review at the offices of the Docket Control of the Arizona Corporation Commission.
3 Notwithstanding the foregoing, *see* Decision Nos. 59549, 59550, and 59551.

4 **Request 12: Personnel file for Wendy Coy.**

5 Division Response: The Division objects to this request on the grounds that it seeks information
6 that is not relevant to the subject matter in the pending action, and disclosure of information that is
7 precluded by law pursuant to A.A.C. Rule R2-5-105.

8 **Request 13: Documents sufficient to identify any other enforcement actions brought by the**
9 **Securities Division within the past ten (10) years against a brokerage firm in**
10 **which the firm's compliance department was aware of and approved the**
outside business activity at issue.

11 Division Response: The Division objects to this request on the grounds that it seeks information
12 that is not relevant to the subject matter in the pending action. Notwithstanding the foregoing
13 objection, the Division is not aware of any documents responsive to this request. If there are any
14 such documents, they are public records available for the convenience of inspection and review at
15 the offices of the Docket Control of the Arizona Corporation Commission.

16 **Request 14: For the time period from January 1, 1994 to the present, all no-action letters**
17 **issued by the Securities Division related to the issue of whether the purchase of**
18 **telephones or telephone programs constituted a security within the meaning of**
the Arizona Securities Act.

19 Division Response: There are no documents responsive to this request. Notwithstanding the
20 foregoing, no action letters are readily available to the public through various legal resources,
21 including CCH and Westlaw. A table of no action letters is available on the Division's web site.

22 **Objection Discussion**

23 The Division objects to Respondent's requests on several grounds. First, The Division
24 objects on the grounds that there is no right to discovery in an administrative contested case
25 proceeding. A.R.S. § 41-1062(4) states that "no subpoenas, depositions or other discovery shall be
26 permitted in contested cases except as provided by agency rule or this paragraph." Emphasis added.

1 The Rules of Practice and Procedure Before the Corporation Commission (the "Commission's
2 Rules") do not provide for "other discovery", therefore, Respondent has no right to this
3 information. While Respondent may argue that the Arizona Rules of Civil Procedure ("ARCP")
4 apply to this proceeding because the Commission's Rules do not set forth a procedure for "other
5 discovery, this is not the case. Commission Rule R14-3-101 states that "[i]n all cases in which
6 procedure is set forth neither by law, nor by these rules, nor by regulations or orders of the
7 Commission, the Rules of Civil Procedure...shall govern." The ARCP does not apply because by
8 law "other discovery" is not permitted under A.R.S. § 41-1062(4).

9 The Division next objects on the grounds of over breadth. Many of Respondents requests,
10 including, but not limited to, requests Nos. 1, 1 c., and 2, are blanket requests that lack specificity
11 and are too sweeping and without sufficient detail to comply with requirements as to designation.
12 *Dean v. Superior Court*, 84 Ariz. 110 (1958). The over breadth of these requests seeks documents
13 that are not relevant to the subject matter in the pending action and which are properly protected by
14 other privileges such as the investigative and work product privileges.

15 With respect to Request Nos. 1., 1b., 1c., 1d., 1e., 1f., 2, 4, 5, and 6, the Division objects on
16 the grounds that Respondent seeks information that is protected from disclosure by the
17 investigative privilege. *See, e.g., State ex rel. Corbin v. Superior Court*, 99 Ariz. 383 (1966); *City*
18 *of Tucson v. Superior Court*, 167 Ariz. 513 (1991). The investigative privilege belongs to the
19 government and serves public law enforcement interests. *See, State v. Tisnado*, 105 Ariz. 23
20 (1969). Documents requested by Respondent contain information involving investigative
21 techniques and assessments and the identities of witnesses and law enforcement personnel and are
22 thus, subject to the privilege. Especially with respect to Respondent's Requests Nos. 4, 5 and 6, the
23 privilege exists, among other things, to prevent interference with investigations, witness
24 intimidation or to allow the target to construct defenses. By seeking information conveyed to or
25 received from other jurisdictions, Respondent is attempting to learn about other possible
26

1 investigations using this case to circumvent confidentiality provisions in other jurisdictions and to
2 achieve ends it cannot otherwise achieve.

3 Furthermore, where government investigative files are made confidential by statute, they
4 have been held to be non-discoverable. *See, Lipschultz v. Superior Court*, 128 Ariz. 16 (1981).
5 Division investigative documents are confidential by statute. Under A.R.S. § 44-2042 all
6 information and documents obtained by the Division during the course of "any examination or
7 investigation are confidential unless the names, information or documents are made a matter of
8 public record." The information Respondent seeks was obtained during the course of the
9 Division's investigation of Respondent and is not a matter of public record.

10 With respect to Request Nos. 1., 1b., 1c., 1d., 1e., 1f, 2, 4, and 6, the Division objects on the
11 grounds that Respondent seeks information that is protected from disclosure by the work product
12 privilege. "The privilege ... prevents an adversary from obtaining documents which contain the
13 mental impressions, conclusions, opinions or legal theories of an attorney or other representative of
14 a party concerning the litigation." *State ex rel. Corbin v. Superior Court*, 140 Ariz. 123, 129, 680
15 P.2d 833, 830 Ariz. App. 1984. *See, also, Brown v. Superior Court In and For Maricopa County*,
16 137 Ariz. 327 (1983). The documents or other things requested by Respondent were prepared by
17 the Division and contain staff interpretations and/or mental impressions of investors' investment
18 experiences with Respondent. These interviews, discussions and document were conducted and
19 prepared in anticipation of litigation and/or preparation for hearing.

20 Finally, with respect to Request Nos. 1., 1b., 1c., 1d., 1e., 1f, 2, 4, 5, and 6, the Division
21 objects on the grounds Respondent seeks information that is protected from disclosure by the
22 attorney-client privilege.

23 RESPECTFULLY SUBMITTED this 6th day of January, 2004.

24
25 By: Pamela T. Johnson
26 Pamela T. Johnson
Attorney for the Securities Division of
the Arizona Corporation Commission

1 ORIGINAL and 13 copies of the foregoing
2 hand-delivered this 6th day of January, 2004 to:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix AZ 85007

7 COPY of the foregoing hand-delivered
8 this 6th day of January, 2004 to:

9 Philip J. Dion, III, Esq.
10 Administrative Law Judge
11 Arizona Corporation Commission
12 1200 West Washington Street
13 Phoenix AZ 85007

14 COPY of the foregoing mailed
15 this 6th day of January, 2004 to:

16 Alan S. Baskin, Esq.
17 Laura Schoeler, Esq.
18 Roshka Heyman & DeWulf, PLC
19 One Arizona Center
20 400 East Van Buren Street, Suite 800
21 Phoenix AZ 85004

22 Burton W. Wiand, Esq.
23 Fowler White Boggs Banker, P.A.
24 501 East Kennedy Blvd., Suite 1700
25 Tampa FL 33602
26 Attorneys for Respondent
InterSecurities, Inc.

Brian J. Schulman, Esq.
Kutak Rock LLP
8601 North Scottsdale Road, Suite 300
Scottsdale AZ 85053
Attorney for Respondents Gregory Russell Brown
and Karen Brown

